IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 232 OF 2000

1. Shri Eknath Volvoikar,
aged about 43 years, r/o
Kamurli, Bhervan wado,
Bardez, Goa,

2. Shri Prakash P. Karapurkar,
aged aboutt 44 years, r/o
Jaidev wado, Naschnora,
Aldona, Bardez, Goa,

3. Shri Rama Nadodkar, aged
about 39 years, r/o Nadora,
Bardez, Goa, Post Colvale,
Bardez, Goa,

4. Shri Hari B. Jalmi, aged
about 39 years, r/o
Satorde, Keri, Ponda, Goa,

5. Shri Subhash D. Dessai, aged
about 42 years, r/o Adne-Baldi,
Quepem, Goa,

6. Shri Ghanashyam B. Naik,
aged about 43 years, r/o
Govalim, P.O. Goa Velha,
Ilhas, Goa,

7. Shri Vilas Naroji, aged
about 39 years, r/o
Dhargal, Oshalbagh, Colvale,
Goa,

8. Shri Chandrakant Sawant, aged
about 37 years, r/o Head Land,
Sada, P.W.D. Quarters, C2-2,
near Sub-Jail, Vasco da Gama,
Goa,

9. Shri Shabi S. Gadekar, aged
about 38 years, r/o Yuwada,
Colvale, Bardez, Goa. ... Petitioners.

Versus

1. State of Goa, through its
Chief Secretary, having office
at Secretariat, Panaji, Goa, and

2. The Chief Engineer, Public
Works Department, Government
of Goa, Altinho, Panaji, Goa. ... Respondents.

Shri M. S. Sonak, advocate for the petitioners.

Smt. W. Coutinho, Government Advocate for the respondents.

CORAM : F. I. REBELLO &
P. V. HARDAS, JJ.

DATE : 5th August, 2003.

ORAL JUDGMENT (Per Rebello, J.)

It is the case of the petitioners that by various orders issued between the years 1981 and 1984, they were appointed to the post of Electrician-cum-Pump Operator in the pay scale of Rs.260-6-326-EB-8-350 in the workcharged establishment, through they were having qualifications of Electrician. By those orders between 18th December, 1981 and 28th July, 1982, the petitioners were temporarily appointed in the workcharged establishment as Electrician-cum-Pump Operator. At the relevant time, no Recruitment Rules existed for the post of Electrician-cum-Pump Operator on the workcharged establishment. Recruitment Rules were framed in the year 2000 and promotional avenues were provided to the post of Foreman. It is also contended that respondent no.2 has two establishments, one being the workcharged and the other the regular establishment. The scales of pay of Electrician-cum-Pump Operator in the workcharged establishment are set out. Similarly, it is pointed out that there are pay scales in the regular establishment.

By Office Memorandum on 29th October, 1990, the petitioners, who were Electrician-cum-Pump Operator on workcharged establishment were brought on par with Pump Operators on regular establishment in the pay scale of

Rs.950-20-1150-25-1400. It is pointed out that there is no category of posts of Electrician-cum-Pump Operator on regular establishment. By Order dated 4th June, 1991, Electricians on workcharged establishment were brought on par with regular establishment. It is the case of the petitioner no.1 that by letter dated 17th August, 1992, he made his first representation for re-designation of the post from Electrician-cum-Pump Operator to Electrician. By Order of 16th January, 1995, the petitioner nos. 5 and 6 were redesignated as Operator (Electrical/Mechanical) in the same pay scale of Electrician-cum-Pump Operator. By letter of 26th March, 1996, the Government informed that request for re-designation as Electrician could not be agreed to. In the years 1993 to 1995 all the petitioners were given Time-Bound Promotional Scale. The Time Bound Promotion Scales corresponded to the pay scale of Electrician on regular establishment as on date i.e. Rs.4000-100-6000. Thereafter, Recruitment Rules were amended on 23rd April, 2000, providing for promotional avenues. The grievance of the petitioners is that they were having some qualifications and experience as Electricians. It was their case that therefore they should be equated as Electricians and accordingly paid in the like manner.

The reliefs as prayed for include a prayer for a writ of mandamus or appropriate writ to designate the petitioner as Electricians in compliance with the Circular dated 17th July, 1992 and to award the petitioners salary in

the pay scale of Rs.1320-2040 with effect from 29th October, 1990 and on the said basis to pay all consequential and further benefits therefrom and also to provide the petitioners promotional avenues in their service careers.

2. On behalf of the respondents, Shri Prakash P. Borkar, Chief Engineer, Public Works Department, has filed affidavit. Categories of establishment in the office of respondent no.2 are then set out as also the pay scales. It is pointed out that there is no category of post of Electrician-cum-Pump Operator and Operator (Electrical/Mechanical) in the regular establishment. It is then pointed out that on issuance of Office Memorandum dated 29th October, 1990, it is directed that the benefits of pay scales and other benefits applicable to the employees on regular establishment be extended to the employees on workcharged establishment, subject to fulfilment of conditions set out therein, which was granted to the petitioner and who got the benefits thereof. It is then pointed out that the petitioners were appointed as Electrician-cum-Pump Operator whereas the six other persons referred to by the petitioners were appointed as Electrician, hence the benefit of O.M. dated 29th October, 1990 could not be extended to the petitioners. An additional affidavit has been filed on 9th January, 2003, in reply to paragraph 24 of the petition. It is pointed out that though there is no difference between the educational qualifications possessed by the six persons referred to in the Order dated 4th June,

1991 and the petitioners, the duty discharged by the petitioners and the said six persons differ. It is then pointed out that the petitioners were initially in the post of Electrician-cum-Pump Operator on workcharged establishment and pursuant to the O.M. dated 29th October, 1990 were brought on par with the regular Pump Operators who perform their work in operation and maintenance of pumps, electric motors, etc. Electricians who were initially appointed on workcharged establishment and later on brought on par with Electricians on regular establishment performed electrical work, including carrying out maintenance work of H.T. and L.T. Electrical installation. It is therefore set out that the duties performed by Electricians and Pump Operators are not identical. It is also pointed out that there has been no discrimination of the petitioner by the respondents.

A rejoinder came to be filed on behalf of the petitioners herein contesting what has been set out in the affidavit of the respondents herein more specifically regarding the nature of the work done by the petitioners herein. In answer, an additional affidavit by way of rejoinder was filed pointing out that in water treatment plants there are HL/LT electrical installations and those Electricians perform the work of maintenance, break-down repairs, etc. It is also pointed out that the Electricity Department is no way connected with HT/LT lines installed inside the water treatment plants.

3. After the matter was heard for sometime, on enquiries from the Court an additional affidavit has been filed on 14th July, 2003. In paragraph 2 it is averred that on further inquiring with the various divisions of the P.W.D. regarding vacant posts of Foreman, these are existing posts and it is pointed out that the petitioners can be considered for promotion subject to their possessing necessary qualifications as prescribed in the Recruitment Rules which are notified in the Official Gazette dated 13th November, 2000. It is also pointed out that a regular D.P.C. will be constituted within a reasonable time to consider promotion after directions from this Court.

4. The major contention on behalf of the respondents is that there are no posts against which the petitioners can be appointed as Electricians. Once that be the case it will be difficult for this Court to direct the respondents to create posts of Electricians and to absorb the petitioners herein against the posts to be created. Whether they must be directed to be appointed as Electricians is another question. It will not be possible for this Court to issue such direction. However, the ends of justice will be met if the averments in paragraph 2 of the affidavit dated 14th July, 2003 of the Chief Engineer are accepted. To a further query on behalf of the respondents, the assessment report of the petitioners as Electrician-cum-Pump Operators has been placed before us. From the aid assessment, it is clear that the petitioners satisfy the bench mark of "Good".

There are two of them who are "Very Good". At any rate, if the petitioners are otherwise eligible in terms of the Recruitment Rules, they would be fit for promotion. In terms of the Recruitment Rules the requirement for promotion to the post of Foreman is Electrician-cum-Pump Operator in the pay scale of Rs.3050-4590 with seven years experience in the grade. All the petitioners have the said experience. In other words, they are fully eligible. Once that be the case we propose to pass the following directions:-

Respondent no.2 is directed to call a meeting of the D.P.C. within one months from today and thereafter after considering the case of the petitioners for promotion against the available vacancies and if they are found eligible, to promote the petitioners, at any rate not later than two months after holding of the D.P.C.

Rule accordingly. In the circumstances of the case, no order as to costs.

F. I. REBELLO, J.

P. V. HARDAS, J.

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